IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.575 OF 2004

Union of India ... Petitioners

v/s

M/s J.K. Transport Corporation ... Respondents

Mr Suresh Kumar for Petitioners.

Mr S.C. Gupte i/b Mr V.L. Panjwani for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 17TH JANUARY 20**05**

P.C.: -

1. By consent of parties, the petition itself is taken up for final hearing.

2. The petitioners challenge the award made by the Arbitrator in relation to claim Nos.3 and 8. So far as the award made by the Arbitrator under claim No.8 is concerned, the learned counsel appearing for respondents concedes that in view of the clear recital in the agreement between the parties, interest could not have been awarded. Therefore, the award made under claim No.8 is set aside.

3. The next challenge in the petition is in relation to the award made under claim No.3. By claim No.3, the Arbitrator has directed the petitioners to pay the increased price of fuel. According to the petitioners, grant of increased price of fuel is contrary to clause 22 of the agreement. According to the learned counsel appearing for respondents, however, despite clause 22 of the agreement, the respondents were justified in demanding the increased price of the fuel because the Officers of the petitioners had promised to consider making payment of the increased price of the

fuel. It is submitted that the agreement between the parties shows that clause 22 does not contain prohibition on payment of increased price of the fuel. Perusal of the award shows that the learned Arbitrator has directed payment of the increased price of the fuel because of the correspondence between the parties as also correspondence between various authorities of the petitioner railways. In my opinion, the award made in relation to claim No.3 is not sustainable. The work order was given on 30th September 1999. The increase in the price of fuel i.e. diesel was in October 1999. Before the agreement was signed, the respondents wrote a letter to the authorities of the petitioners pointing out that there is increase in the price of the fuel and therefore, the increase in the price of the fuel should be taken into consideration. However, the respondents entered into the contract on 3rd December 1999 which contained clause 22. Clause 22 reads as under :-

> "22. Rates :- Tenderer should note that the rates quoted shall embrace all operations necessary for the satisfactory completion of the work and shall include all charges for handling, transport, lead, lift, labour, housing, sanitation, water supply, materials, fuel, tools and plants, electric power, workshop facilities, machinery, security,

lighting etc. and any other expenses of every kind."

. Now, this contract is entered into by the respondents after there was increase in the price of the fuel. In any case, this was a concluded contract between the parties and this concluded contract could be replaced only by another concluded contract between the parties. It is neither the case of the respondents nor the Arbitrator has found in the award that as a result of correspondence between the parties, a new concluded contract between the parties on rates of fuel came into existence. In the absence of there being any concluded contract between the parties, which is contrary to the clause 22, the respondents would not be entitled to the increased price of the fuel. The award made by the Arbitrator on claim No.3 is contrary to the clause 22 of the contract between the parties. Perusal of clause 22 shows that it clearly recites that the rates quoted include the price of the ingredients which are mentioned in clause 22. The conduct of the respondents also shows that the respondents also understood this clause to prohibit payment of increased price of the items which are mentioned in that clause, otherwise the respondents would not have addressed letters to the authorities seeking payment at increased rate of fuel. Taking overall view of the matter therefore, the present

petition, in my opinion, has to succeed. The petition is accordingly allowed, the award impugned in the petition in so far as it directs payment to the respondents against claim No.3 and claim No.8 is set aside. The award of the Arbitrator stands modified to that extent. Petition is disposed off. It is clarified that so far as the award of the Arbitrator allowing interest on the awarded amount from the date of award till the date of realisation is concerned, the same is not disturbed by this order.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.